

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAY 30 2023

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

OMAR SANCHEZ-LOPEZ,

Petitioner,

v.

MERRICK B. GARLAND, Attorney  
General,

Respondent.

No. 21-120

Agency No.  
A079-748-626

MEMORANDUM\*

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted May 16, 2023 \*\*

Before: BENNETT, MILLER, and VANDYKE, Circuit Judges.

Omar Sanchez-Lopez, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's decision denying his motion to reopen removal proceedings. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen. *Najmabadi v. Holder*, 597 F.3d

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

983, 986 (9th Cir. 2010). We deny the petition for review.

Because Sanchez-Lopez does not challenge the agency's determination that his motion to reopen was untimely, we do not address it. *See Lopez-Vasquez v. Holder*, 706 F.3d 1072, 1079-80 (9th Cir. 2013).

Our jurisdiction to review the agency's discretionary decision not to reopen proceedings sua sponte is limited to contentions of legal or constitutional error. *See Lona v. Barr*, 958 F.3d 1225, 1227 (9th Cir. 2020). Sanchez-Lopez's claims that the agency violated due process by not informing him of apparent eligibility for voluntary departure, not advising him of the right to seek counsel, and not providing him with a reasoned explanation by the BIA, fail because he has not shown error or prejudice. *See Padilla-Martinez v. Holder*, 770 F.3d 825, 830 (9th Cir. 2014) ("To prevail on a due-process claim, a petitioner must demonstrate both a violation of rights and prejudice." (internal citations omitted)); *Zamorano v. Garland*, 2 F.4th 1213, 1223 (9th Cir. 2021) ("[F]ailure to advise about apparent eligibility . . . can be excused when the petitioner's eligibility for relief is not plausible." (internal quotation marks and citation omitted)); *Falcon Carriche v. Ashcroft*, 350 F.3d 845, 848 (9th Cir. 2003) (BIA's summary affirmance procedure does not violate due process).

The temporary stay of removal remains in place until the mandate issues.

**PETITION FOR REVIEW DENIED.**